

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**JUL 10 1998**

**PATRICK FISHER**  
Clerk

ALPHONSO DWANE FRAZIER, SR.,

Petitioner-Appellant,

v.

JOE WILLIAMS, Warden and  
ATTORNEY GENERAL FOR THE  
STATE OF NEW MEXICO,

Respondents-Appellees.

No. 97-2314  
(D.C. No. CIV-96-372-MV)  
(D. N.M.)

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**ORDER AND JUDGMENT \***

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Before **KELLY** , **BARRETT** , and **HENRY** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner Alphonso Dwane Frazier, Sr. appeals from the denial of his petition for habeas relief filed under 28 U.S.C. § 2254. We grant petitioner a certificate of probable cause,<sup>1</sup> exercise jurisdiction under 28 U.S.C. § 1291, and affirm.

Petitioner, a prisoner of the State of New Mexico, entered a plea of guilty to charges of second degree murder, aggravated burglary, tampering with evidence, and aggravated assault. He also pleaded no contest to a charge of conspiracy to commit second degree murder. The trial court sentenced petitioner to twenty-seven years' imprisonment, to be followed by two years of parole.

In his habeas petition, petitioner argues that his trial counsel was constitutionally ineffective for: (1) promising him a ten-year sentence, (2) refusing to file a motion to withdraw his guilty plea as he requested, (3) misrepresenting the sentence he would receive, and (4) failing to provide effective representation at a critical stage of the proceeding. After a hearing, the magistrate judge recommended that the petition be denied because petitioner's assertions were unsupported by any evidence except for his own testimony, and his testimony contradicted his trial counsel's testimony and the transcript from the

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<sup>1</sup> Because petitioner filed his petition before the enactment of the Antiterrorism and Effective Death Penalty Act, the Act's certificate of appealability provisions do not apply. See United States v. Kunzman, 125 F.3d 1363, 1364 n.2 (10th Cir. 1997), cert. denied, 118 S. Ct. 1375 (1998).

change of plea hearing on important points. In addition, the magistrate judge found that the State had a very strong case against petitioner and his guilty plea limited his exposure at sentencing for the murder charge. The district court adopted the magistrate judge's recommendation.

We review a claim of ineffective assistance of counsel de novo, using the two-prong test set out in Strickland v. Washington, 466 U.S. 668, 687-89 (1984). See Hoxsie v. Kerby, 108 F.3d 1239, 1245 (10th Cir.), cert. denied, 118 S. Ct. 126 (1997). We have thoroughly reviewed the parties' briefs and the record on appeal. We find no error, and affirm for substantially the same reasons as those set forth in the magistrate judge's thorough and well-written proposed findings and recommended disposition, a copy of which is attached.

We grant petitioner a certificate of probable cause. The judgment of the United States District Court for the District of New Mexico is AFFIRMED.

Entered for the Court

James E. Barrett  
Senior Circuit Judge

Attachment not available electronically.